

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3876 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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R L PATEL

Versus

SECRETARY  
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Appearance:

MR YN OZA for Petitioner  
MR DN PATEL for Respondent No. 1  
MR RJ OZA for Respondent No. 2  
Mr RV Desai, AGP for the State  
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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 15/12/2000

ORAL JUDGEMENT

The petitioner above named, has preferred this petition under Article 226, 14,16,19 and 21 of the Constitution of India, for appropriate writ, order or direction for quashing and setting aside the order at Annexure 'A' recorded by the Gujarat Public Service Commission stating that the petitioner was not entitled to any benefit extendable to the Scheduled Tribe

candidates in the Stage of Gujarat. It is further prayed in this petition that a direction be issued to the respondent to declare result of the petitioner and to give suitable appointment in the services of State of Gujarat. It appears to be the case of the petitioner that the petitioner is born and brought up in the Union Territory called Dadra and Nagar Haveli. That the petitioner, in fact, belongs to the state of Gujarat. That his forefathers had properties divided into the State of Gujarat and Dadra and Nagar Haveli. That the petitioner belongs to Dhodia caste, which is notified as Scheduled Tribes by Dadra and Nagar Haveli Administration as well as by the Government of Gujarat. That the mother of the petitioner is a native of village Dungra in Bulsar District of Gujarat. That by birth, she belongs to Dhodia caste of Gujarat State. That thereafter, she married to Shri Laxmanbhai Patel, a domicile of Dadara and Nagar Haveli. That after the marriage, the mother of the petitioner started staying at Dadra and Nagar Haveli along with her father and mother because she was the only child of her parents. That even today, the mother of the petitioner possess lands in Bulsar District. That the petitioner, thereafter, was born at Dadra & Nagar Haveli. That the petitioner studied up to S S C at that place and, thereafter, he did his graduation and Post Graduation in the State of Gujarat.

2. It is further contended by the petitioner that the Gujarat Public Service Commission, (for short, 'GPSC'), respondent no.1, in the present petition, had issued a notification for recruitment of Class I & II posts in the state Administrative services on 1.10.1985. A copy of the said notification has been placed at Annexure 'B' to the petition. That the petitioner had offered his candidature in response to the said advertisement. That the petitioner is a Scheduled Tribe (for short, 'S.T.') candidate and it is stated in the advertisement that the age limit prescribed is 28 years for general candidates and 33 for ST candidates and the age is to be counted as on 1.10.1985.

3. The petitioner further claims in the petition that he has cleared part I and II successfully and, therefore, he was called for personal interview on 2.6.1988. It is further contended that the first respondent has declared result on 30.11.1988 which has been published in Government Gazette on 15.12.1988. That the petitioner figured at sr.no.1 in the list of candidates, whose results have been kept in abeyance. A copy of the said Gazette notification has been placed at Annexure 'C'.

4. That thereupon the petitioner addressed letter dated 9.1.1989, requesting the first respondent to furnish him a copy of mark sheet. The petitioner made certain representation to other authorities also. Ultimately the petitioner was informed by letter dated 4.4.1989 that the petitioner did not belong to S.T. community, so far as Gujarat State is concerned, and therefore, he was not entitled to any benefit extendable to the ST candidates of this state.

5. Feeling aggrieved by the said order of the first respondent, the petitioner has preferred this petition before this court. It is mainly contended here that the petitioner belongs to Dhodia community which is declared to be a community belonging to ST in Gujarat as well as in Dadra and Nagar Haveli. It is also contended that the mother of the petitioner belongs to Gujarat and she has got certain properties in the State of Gujarat. It is also contended that the mother of the petitioner went to reside with her husband after marriage, in Dadra and Nagar Haveli and, the petitioner was born there and the petitioner also took his education upto SSC in Dadara & Nagar Haveli. That the petitioner belongs to ST community for all purposes and also for getting recruitment in the State of Gujarat. That the aforesaid action on the part of the first respondent in not treating him to be a person belonging to ST for the State of Gujarat is illegal and unconstitutional and deserves to be quashed and set aside. The petitioner, therefore, prays that the aforesaid order of the first respondent be quashed and set aside and direction may be issued for the declaration of results of the petitioner with respect to the said appointment process. It is further prayed that appropriate appointment in the service of State of Gujarat may also be given to the petitioner.

6. On receipt of the petition, rule was issued. Respondents have appeared in response to the service of rule. Affidavits have been filed and documents have also been submitted. It is mainly contended on behalf of the respondents that the petitioner does not belong to ST so far as Gujarat State is concerned and, therefore, he is not eligible for the above post. The respondents have, therefore, prayed that the petitioner is not entitled to any relief and hence the petition be dismissed with costs.

7. I have heard the learned Advocates for the parties and have perused the papers. Mr Y N Oza, learned Sr.Advocate for the petitioner has argued at length that

the petitioner belongs to ST since he belongs to Dhodia community, which is declared to be ST in Dadara & Nagar Haveli. We may not dispute this position that the petitioner belongs to ST so far as Dadara & Nagar Haveli is concerned, because that fact is not very much in dispute in this petition and since the petitioner has produced at page 44 a certificate issued by the Mamlatdar, Dadra and Nagar Haveli on 17.7.1976 showing that the petitioner belongs to ST under the Constitution (Dadra and Nagar Haveli) SC & ST Order, 1962.

8. Learned Sr. Advocate, Mr Y N Oza has further argued that Dhodia community is also declared to be the one belonging to ST in Gujarat State. Let us not dispute that aspect of the case for the purpose of this petition. It is then contended that the petitioner should, therefore, be treated to be a person belonging to ST even for the purpose of State of Gujarat. For this purpose, reliance has been placed on a decision of this Court in the case of Kum. Mangus Singh v. Dean, B J Medical College & Ors., (AIR 1986 Guj. 175) It may be taken into consideration here that at the interim stage, an order has been passed by this Court on 7.3.1990 (Coram: R A Mehta, J.), wherein the aforesaid decision has been taken into consideration and the said order has been passed considering the said decision of this Court.

9. It has to be considered here that the aforesaid decision has been specifically over-ruled by the Apex Court in Marri Chandra Shekhar Rao v. Dean, Seth G S Medical College & Ors. (1990(3) SCC 130). It is to be seen that the aforesaid decision has been specifically considered and overruled by the aforesaid decision of the Apex Court. This would clearly mean that the foundation of the interim order of this court which was based on the aforesaid decision of this Court has been taken away by the aforesaid decision of the Apex Court. The Hon'ble Apex Court has considered the aspect of the provisions contained in Article 341 and 342 read with Article 15 (4) and 16(4) of the Constitution of India. Certain observations of the Supreme Court are pertinent and relevant and important for the purpose of deciding the present petition and, therefore, it is worthwhile to refer those observations for the purpose of ready reference:

"The petitioner was born in Tenali in the State of A.P. It is stated in the petition that he belongs to Gouda community also known as 'Goudi'. This community is recognised as 'Scheduled Tribe' in the Constitution (Scheduled Tribes) Order,

1950, as amended upto date. The father of the petitioner had obtained a Scheduled Tribe Certificate from the Tahsildar and on that basis he got an employment in ST quota in a Government of India Undertaking and was placed in Bombay in the State of Maharashtra. The petitioner accordingly came to live in Bombay since the age of nine years. After passing the 12th standard examination of the Maharashtra State Board of Secondary and Higher Secondary Examination, Bombay Divisional Board, the petitioner submitted application for admission to the respondent medical college seeking benefit of reservation in favour of STs. But he was denied the admission too the MBBS course in any of the respondent medical colleges though ST candidates who had secured lesser marks than him had been admitted. The denial of admission was based on a circular dated February 22, 1985 issued by the Government of India, Ministry of Home Affairs which, inter alia, states that a Scheduled Caste/Tribe person who has migrated from the state of Origin to some other State for the purpose of seeking education, employment etc. will be deemed to be a Scheduled Caste/Tribe of the State of his origin and will be entitled to derive benefits from the State of origin and not from the State to which he has migrated. Therefore, the question is whether one who is recognised as a Scheduled Tribe in the State of his origin and birth continues to have the benefits or privileges or rights in the State of migration or where he later goes ? Disposing of the writ petition goes? Disposing of the writ petition the Supreme Court held:

The petitioner is not entitled to be admitted to the Medical College on the basis that he belongs to Scheduled Tribe in his original State."

10. It would be very much important to consider the observations made in the aforesaid decision. It has been observed that preventing a ST candidate of A.P. from getting a medical seat in Maharashtra under the ST quota, would not be violative of Article 14 of the constitution of India, because a ST candidate of A.P. will be entitled to all benefits in Medical Colleges of Maharashtra. It is also not possible to accept the submission that under Articles 14 and 19 etc, if a parent wishes to keep his child with him, the opposite view would necessarily mean that he must remain confined to

his home State, disregarding all suitable job opportunities commensurate with his education, experience and talent.

11. It has also been observed in the aforesaid judgment as under:

"The words "for the purpose of this Constitution"

must mean that a Scheduled Caste so designated must have right under Articles 14, 19(1)(d), 19(1)(e) and 19(1)(f) inasmuch as these are applicable to him in his area where he migrates or where he goes. The expression "in relation to that State" would become nugatory if in all States the special privileges or the rights granted to SC or ST are carried forward. It will also be inconsistent with the whole purpose of the scheme of reservation. In Andhra Pradesh, a Scheduled Caste or a Scheduled Tribe may require protection because a boy or a child who grows in that area is inhibited or is at a disadvantage. In Maharashtra that caste or that tribe may not be so inhibited but other castes or tribes might be. If a boy or a child goes to that atmosphere of Maharashtra as a young boy or a child and goes in a completely different atmosphere or Maharashtra where this inhibition or this disadvantage is not there, then he cannot be said to have that reservation which will denude the children or the people of Maharashtra belonging to any segment of that State who may still require that protection. The protection is necessary for the disadvantaged castes or tribes of Maharashtra as well as disadvantaged castes or tribes of Andhra Pradesh. Thus, balancing must be done as between those who need protection and those who need no protection, i.e. who belong to advantaged castes or tribes and who do not. Treating the determination under Articles 341 and 342 of the Constitution to be valid for all over the country would be in negation of the very purpose and scheme and language of Article 341 read with Article 15(4). Reservations should and must be adopted to advance the prospects of weaker sections of society, but while doing so care should be taken not to exclude the legitimate expectations of the other segments of the community.

Pradesh from getting a medical seat in Maharashtra under the Scheduled Tribes quota would not be violative of Article 14 because a Scheduled Tribe candidate of Andhra Pradesh will be entitled to all the benefits in medical colleges of the State of Maharashtra. It is also not possible to accept the submission that under Articles 14, 19(1)(d), (e) and (f), if a parent wishes to keep his child with him, the opposite view would necessarily mean that he must remain confined to his home State, disregarding all suitable job opportunities commensurate with his education, experience and talent."

12. On a bare look at the aforesaid observations, it is very clear that when a candidate has been recognised as a member of ST in his original State, on his migration to another State, is not entitled to get benefit of reservation of seat. A recommendation has been made that it is however, for the Legislature to make appropriate legislation to effectively deal with the situation where migration is involuntary, such as due to transfer of place of employment etc. This means that even in case of migration involuntarily, the benefit of provisions extendable to a ST and SC will not be extendable to the persons who migrates from one State to another. In other words, when a person belonging to ST community of one State, travels to another State, then he does not carry his status as a person belonging to ST with him to another State. It also shows that the said status conferred upon him would be useful to him only in the State where he is conferred with the status. In the present case, it is a fact that the aforesaid status was conferred upon the petitioner by the Administration of Dadra & Nagar Haveli. The petitioner has not obtained any certificate showing that he belongs to ST from the appropriate competent authority from the State of Gujarat. Even if Dhodia community may have been declared to be ST community for the relevant purpose in both the States, by appropriate orders of the State concerned, it would not mean that a person belonging to the said community, who is domiciled in a particular state is entitled to the benefit of the said status in another State, where also this community is declared to be ST community. Page 44 is the certificate issued by the Mamlatdar, Dadra & Nagar Haveli dated 17.7.1976. It states that the present petitioner belongs to Dhodia caste, which is recognised as ST under the Constitution (Dadra & Nagar Haveli) Scheduled Castes/Tribes Order 1952.

13. This means that the petitioner has been declared to be a person belonging to ST by the said State for the relevant purpose in the said state only. He is not declared to be a person belonging to ST so far as Gujarat is concerned, since no such certificate has been obtained by him from the competent authority of this State.

14. The respondents have filed affidavit of Mr D M Dodia, Under Secretary, Government of Gujarat at page 52. There, the position has been amply verified. In para 5 of the affidavit, it has been clearly stated that the petitioner belongs to Dadra & Nagar Haveli, which has been notified as ST by the Dadra & Nagar Haveli administration. That the petitioner himself has admitted that he was born and brought up in the Union Territory of Dadra & Nagar Haveli, which makes it clear that the petitioner is an origin of Union Territory and he is not an origin of Gujarat State. It is further stated in the affidavit that the Government of Gujarat has been following guidelines issued by the Union of India, which has been produced at page 56 which are dated 27.6.1986. The guidelines issued by the Central Government are also on record at page 58. The cases of migration have been taken up in the said guidelines and the same can be reproduced for ready reference as follows:

"Where a person migrates from the State to another, he can claim to belong to a Scheduled Caste or Scheduled Tribe only in relation to the State to which the originally belonged and not in respect of the State to which he has migrated."

By letter at page 64 dated 22.3.1997, the central Government has written to all State Governments clarifying the position of applicability of Articles 341 and 342 of the Constitution of India. This also makes the thing clear and here also the permanent and temporary residence has been discussed at length.

15. The above discussion and the above decision of the Supreme Court make it clear that whenever the State Government issues orders with respect to ST and SCs the pure and simple meaning is that these orders are restricted to the said particular State only and it does not travel beyond the said State. Therefore, the petitioner has been declared as a person belonging to ST and it goes without saying that the said order was restrictive for the purpose of Dadra & Nagar Haveli only.



He, therefore, cannot be treated to be a person belonging to ST, so far as Gujarat State is concerned, in view of the Hon'ble Supreme Court's decision (1990(3) SCC 130 (supra)).

16. The respondents have also produced application submitted by the petitioner before the first respondent for recruitment. There also the permanent residence of the petitioner is shown to be of the Dadra & Nagar Haveli administration. That shows that even in the application for recruitment submitted by him, he has shown his permanent address of Dadra & Nagar Haveli. It will then be interesting to note that when the advertisement issued by the first respondent, it was made clear that the person concerned should be belonging to ST & SC of Gujarat State.

17. In the above view of the matter, in my opinion, the petitioner cannot be treated to be a person belonging to ST so far as Gujarat State is concerned. It cannot be said that the respondents have acted illegally in not accepting the petitioner as belonging to ST so far as Gujarat State is concerned and the aforesaid action of the present respondent is, therefore, found to be legal. It is true that in this petition, interim relief was granted and a direction was issued to the State to issue appointment order to the petitioner. Pursuant to the order of this Court, the respondents had given appointment to the petitioner. Learned Sr. Advocate for the petitioner has made it clear that the petitioner was entitled to all benefits of Class I Officer. Learned Advocate for the petitioner has also submitted that the offer of appointment was for the post of Class II, and, therefore, it was not accepted by the petitioner at the relevant point of time. On the other hand, learned AGP, Mr R V Desai has made it clear that the petitioner stands in waiting list so far as the post of Class I is concerned and, therefore, there was no question of offering any posting or appointment to the petitioner to Class I post, at the relevant point of time. Any way, it is clear that the petitioner does not and did not belong to ST for the purpose of Gujarat State, and, therefore, he was not eligible for consideration for appointment to any post. In that view of the matter, in my opinion, the respondent has not considered him to be a person belonging to ST which action is not vulnerable, illegal or unjust and, therefore, the petitioner is not entitled to any relief since the said action of the respondent is not proved to be illegal. When the action of the

respondents is

be granted to the petitioner. In the facts and circumstances, the petition is without any merits and is, therefore, required to be dismissed.

18. In the result, this petition is ordered to be dismissed. Rule is discharged. The interim relief granted earlier stands vacated. In the facts and circumstances, there shall be no order as to costs.

15.12.2000 [D P Buch, J.]

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